

Issued by the

UNITED STATES DISTRICT COURT

Northern DISTRICT OF California

Digital Millennium Copyright Act,
 section 512(h) subpoena to online
 service provider

SUBPOENA IN A CIVIL CASE

v.

Case Number: ¹

CV 06 - 80304 MISC. JW

RS

TO: Google, Inc., Google Video Support, DMCA Complaints
 1600 Amphitheatre Parkway
 Mountain View, CA 94043

- ☐ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
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- ☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

Documents sufficient to allow Landmark Education to identify the infringer "Asatgiaire" who posted videos labeled "Introduction" and "Inside the Landmark Forum" (1 through 6 of 6), as described in the letter of notification in Exh. A.

PLACE Steefel, Levitt & Weiss, PC One Embarcadero Center, 30th Floor San Francisco, CA 94111-3719	DATE AND TIME October 28, 2006 10:00 AM
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- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) Sandy Morris	DATE 10-19-06
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ISSUING OFFICER'S NAME ADDRESS AND TELEPHONE NUMBER

USDC, 280 So. 1st St Rm 2112, San Jose, CA 95113 (408) 535-5363

PROOF OF SERVICE

DATE

PLACE

SERVED

SERVED ON (PRINT NAME)

MANNER OF SERVICE

SERVED BY (PRINT NAME)

TITLE

DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

Rule 45, Federal Rules of Civil Procedure, Parts C & D:

(c) PROTECTION OF PERSONS SUBJECT TO SUBPOENAS.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d) (2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3) (A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to

the provisions of clause (c) (3) (B) (iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held, or the demanding party to contest the claim.

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

(iv) subjects a person to undue burden.

(B) If a subpoena

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or if the party in who behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) DUTIES IN RESPONDING TO SUBPOENA.

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

LANDMARK EDUCATION LLC
158 SACRAMENTO STREET, SUITE 200
SAN FRANCISCO, CA 94111
TELEPHONE 415 981 8850
FACSIMILE 415 616 2411
WWW.LANDMARKEDUCATION.COM

By Facsimile and Hand Delivery

October 13, 2006

LandmarkEducation

Google, Inc.
Attn: Google Video Support, DMCA Complaints
1600 Amphitheatre Parkway
Mountain View, CA 94043

To Whom It May Concern:

**THE FOLLOWING COMMUNICATION IS EXTREMELY
TIME-SENSITIVE AND REQUIRES IMMEDIATE ACTION.
UNLESS THE VIDEO REFERENCED IN THIS LETTER IS
REMOVED WITHIN 24 HOURS, WE WILL IMMEDIATELY
PURSUE LEGAL ACTION.**

As the General Counsel of Landmark Education, an international training and development company that delivers personal growth courses in 21 countries worldwide, I am writing to express our strong objection to the posting on your Website of a video which was found on Video Search, entitled "2003_Inside_Landmark_Forum" (<http://video.google.com/videoplay?docid=-5762907067305296500&hl=en>).

The video includes portions of our course The Landmark Forum, which course is copyrighted by and proprietary to Landmark Education. Not only does the video infringe our registered copyright (TXu 1-120-461), it is replete with libelous statements which are severely damaging to individuals that have been inaccurately portrayed without their consent and to Landmark Education. For these reasons, it is critical that the video be taken off your Site immediately or we will have no choice but to promptly initiate legal action.

As the only agent authorized by Landmark Education to approve use of our copyrighted materials, I have a good faith belief that use of the copyrighted materials described above on the allegedly infringing web pages is not authorized by the copyright owner, its agent, or the law.

So you understand the facts and the serious nature of this matter, here is some background regarding the posted material. On May 24, 2004, in the program "Pieces á Conviction," France TV3 broadcast a report on Landmark Education. The apparent purpose of this report was to portray Landmark Education as a harmful cult. There were many wholly inaccurate and biased statements in the program, as well as some extremely serious accusations that were totally and absolutely unfounded. TV3 operated completely unprofessionally, using tactics including lying, manipulating, using illegally obtained materials, and intentionally presenting materials out of context. TV3, without authorization from Landmark Education, used confidential footage of The Landmark Forum that was shot undercover by a reporter who falsified his personal information and did the filming in violation of his signed legal agreement protecting the privacy of the other participants in the course. The broadcasting of this program had disastrous consequences and resulted in considerable damage to Landmark Education's subsidiary operating in France. Additionally, all the people that participated in the course had their rights violated by the reporter and by the station, and the posting of this footage on exponentially increases the damages to them and to Landmark Education.

When this program was broadcast in France, Landmark's attorney in France sent a detailed letter to TV3 in which he refuted, point by point, the gross inaccuracies and defamatory and libelous representations in their program. Upon receipt of such letter, TV3 removed the transcript of the documentary from its own Website.

Formed in 1991, Landmark Education was recently recognized "as one of the top leadership and development training program providers in the world" by HR.com/James McNeil. Landmark Education is owned by its Employee Stock Option Plan and delivers educational programs and professional development in the areas of career, communication and productivity. Surveys show that 94 percent of Landmark Education's customers say, upon completing their course, that The Landmark Forum has

made a positive, profound and lasting difference in their lives. Nearly 1 million people around the world have participated in The Landmark Forum.

This matter is of the utmost importance. Time is of the essence regarding the removal of the video containing copyrighted and proprietary material and false and libelous statements from your Website. Accordingly, I respectfully insist that the video be taken off your Site immediately. I am confident that you did not know that this video contained copyrighted and proprietary material and libelous statements. However, given you now are on notice of this, any continuation of the video on your Site puts Google at risk for copyright infringement and libel. Therefore, I trust you will remove the video immediately so that legal action will not be required.

I also request you contact me to confirm both receipt of this communication, and that immediate action will be taken to remove the video and prevent further damage to the reputations of Landmark Education as well as and the nearly 1 million people around the world who have participated in our programs.

I swear, under penalty of perjury, that the information in this notification is accurate and that I am the copyright owner or am authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

I appreciate your understanding of the seriousness of this matter and look forward to your immediate action and prompt response.

Sincerely,



Art Schreiber
General Counsel
Landmark Education

Phone: 415-616-2439

e-mail: art.schreiber@landmarkeducation.net